# In the Supreme Court of the United States

OCTOBER TERM, 1966

No.

W. WILLARD WIRTZ, SECRETARY OF LABOR, PETITIONER

*v.*

LOCAL UNIONS NOS. 9, 9-A, AND 9-B, INTERNATIONAL UNION OF OPERATING ENGINEERS

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The Solicitor General, on behalf of the Secretary of Labor, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

### OPINIONS BELOW

The opinion of the court of appeals (App. A, pp. 11–16, *infra*) is reported at 366 F. 2d 911. The opinion of the district court (App. C, pp. 18–23, *infra*) is reported at 254 F. Supp. 980.

### JURISDICTION

The judgment of the court of appeals (App. B, p. 17, *infra*) was entered on October 6, 1966. On January 4, 1967, Mr. Justice White extended the time for filing a petition for a writ of certiorari to and in-



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cluding March 3, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTION PRESENTED

Whether the Secretary of Labor's power to institute an action to invalidate a union election pursuant to Title IV of the Labor-Management Reporting and Disclosure Act of 1959 is limited to the particular allegation made by a complaining union member and to the particular contest challenged by the complainant.

## STATUTES INVOLVED

The pertinent provisions of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401 *et seq.*, are set forth in Appendix E to our petition for a writ of certiorari in *Wirtz* v. *Local 153, Glass Bottle Blowers Association*, filed today.

## STATEMENT

The Secretary of Labor instituted this action under Title IV of the Labor-Management Reporting and Disclosure Act of 1959 to set aside the results of contests for all major offices in respondent's June 1963 local union election and to have a new election held under the Secretary's supervision. The proof, produced by the Secretary's investigation, established that Vern L. Taylor and six other members of the union who had sought to run for various offices in the 1963 election had been declared ineligible, all by reason of the "continuous good standing" rule in the union's constitution (R. 30-33, 97-98).[1] That rule

[1] "R." citations are to the Transcript of Record prepared for use in the court of appeals.

required a member to have paid his dues on or before the first day of each quarter for one year in order to be eligible to run for office (R. 76, 77).[2]

Taylor protested his disqualification to the union when it was made and after the election. His complaints, which specifically attacked the "continuous good standing" requirement, were rejected by the union at all levels (R. 64–74). Following the final union denial of his complaint, Taylor filed a complaint with the Secretary (R. 60–63).

The Secretary alleged in the district court that the "continuous good standing" rule was a violation of 29 U.S.C. 481(e) because it was an unreasonable qualification. The district court found that the rule, which rendered 87 percent of the parent local's members ineligible to run for union office,[3] was unreasonable. It determined, however, that relief could be granted only as to the contest for Financial Secretary, in which Taylor had sought to participate, and not with respect to any other office.[4]

On cross-appeals, the Court of Appeals for the Tenth Circuit affirmed both portions of the district court's decision. While recognizing that other prospective candidates who had filed for nomination had been disqualified by the same illegal restriction, the

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[2] Only members of the parent local, Local 9, were eligible to run for office.

[3] The "continuous good standing" rule was not imposed as to certain minor offices, for which no candidates could be found who met the rule's requirement. Consequently, the rule's application could not have affected those minor offices, and the Secretary did not seek to rerun those contests.

court held that the Secretary's authority was limited not only to the subject matter of the internal complaint of the union members who have exhausted their internal remedies but also to the specific offices mentioned in the complaint (pp. 11–16, *infra*.).[4]

## REASONS FOR GRANTING THE WRIT

In this case, as in *Wirtz* v. *Local No. 153, Glass Bottle Blowers Association*, decided by the Court of Appeals for the Third Circuit, and in *Wirtz* v. *Local No. 125, Laborers' International Union*, decided by the Court of Appeals for the Sixth Circuit, the court below has taken an erroneously restrictive view of the remedial powers assigned to the Secretary of Labor under Title IV of Labor-Management Reporting and Disclosure Act of 1959. We are filing petitions for writs of certiorari in all three cases because we believe that the limitations imposed by the courts of appeals in these cases and in *Wirtz* v. *Local Unions 410, 410A, 410B & 410C, International Union of Operating Engineers*, 366 F. 2d 438 (C.A. 2), severely hamper the enforcement of the rights protected by the Act.

1. There is no support in the language of the statute for the restrictive interpretation given it by the court below. To be sure, the Act authorizes the Secretary to step in only after a union member has exhausted internal union remedies. 29 U.S.C. 482(a). But the

[4] This case has not been affected by the mootness problem involved in the *Glass Bottle Blowers* and the *Laborers' International Union* cases (in which we are today filing petitions for certiorari) because a trusteeship imposed on the local by the international union has prevented the holding of a regular election.

statute does not, in terms, limit the Secretary's investigation or his authority to institute suit to the violation alleged in the complaint. It empowers him to bring a civil action, after investigating the union member's complaint, "if he finds probable cause to believe that *a* violation of this title has occurred * * * ." (Emphasis added.) It is significant, we think, that the statute is not limited to "the violation alleged" but is framed in terms which entitle the Secretary to proceed, after a protest has been made to the union and rejected, if he finds *any* violation to have occurred.[5] And the statute then authorizes the district court to set aside not only the contest challenged by the complainant but the "invalid election." We submit that, on its face, the statute confers far broader powers on the Secretary than the court below granted him.

The legislative history of the Act, as well, refutes the view taken by the court below. The exhaustion requirement of 29 U.S.C. 482(a) was intended to preserve "a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections." S. Rep. No. 187, 86th Cong., 1st Sess., p. 21; S. Rep. No. 1684, 85th Cong., 2d Sess., p. 13. But that purpose is served in circumstances such as those presented here. The union has had that opportunity and

[5] This language was deliberately chosen by Congress. A bill which was proposed but not enacted (S. 1002, 86th Cong.) provided that if the union member alleged a violation of the Act the Secretary was to investigate "such allegation" and institute an action if he found "probable cause to believe such allegation is true."

rejected it. The very challenge made by the Secretary to the contests other than that for Financial Secretary—*i.e.*, that the impermissible "continuous good standing" requirement was imposed—was submitted to the union by the complaining member. Moreover, since the Act was designed to vindicate the public's right to democratically run unions and not simply to advance the private rights of the individual members who might complain, the Secretary should not be limited in the relief he may obtain merely because no union member has seen fit to specify a contest which has been tainted.[6]

Finally, it seems clear that Congress could not have intended the result reached below. Title IV rights—which are necessary guarantees of union democracy—are enforceable solely by the Secretary, unlike rights enumerated by Title I, which are individually enforceable.[7] This Court has made it clear that as to Title IV "Congress decided to utilize the special knowledge and discretion of the Secretary of Labor in

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[6] We do not understand the court of appeals to have imposed a requirement that only candidates for office have standing to complain before the Secretary may attack that contest. Such a requirement would be plainly insupportable in view of the language of the Act, which allows action by the Secretary on the complaint of "a member * * *," 29 U.S.C. 482(a), and the legislative history, which makes it clear that the election provisions of the Act are to be enforced by the Secretary "upon complaint of any union member * * *." S. Rep. No. 187, 86th Cong., 1st Sess., p. 21; S. Rept. No. 1684, 85th Cong., 2d Sess., p. 13. There can be no question, therefore, that the Secretary may act on the complaint of any member, whether or not he is a disappointed candidate.

[7] Congress rejected proposed bills which would have made Title IV rights enforceable in a private suit. H.R. 8342, H.R. 8400, 86th Cong.

order best to serve the public interest." *Calhoon* v. *Harvey*, 379 U.S. 134, 140. It makes little sense to restrict the Secretary, who alone may bring actions under Title IV, to the four corners of the complaint made by the union member. It is the Secretary who has the very substantial powers of investigation (29 U.S.C. 521) which are to be utilized in aid of the suit. It is the Secretary's policy and practice to notify unions before an action is begun of all violations disclosed by his investigation.[5] It would be anomalous if the abuses which he discovers and which he calls to the union's attention were totally irremediable.

2. As a matter of practical administration, the rule announced by the court below is unsound. A number of courts have recognized that union members do not, as a rule, file carefully drafted complaints. *E.g.*, *Wirtz* v. *Local Union 169, International Hod Carriers*, 246 F. Supp. 741 (D. Nev.). Consequently, if the complaint be the measure of the Secretary's powers, he may often be artificially limited by technical flaws in that document or by the individual member's failure to realize the consequences of the violation of which he is complaining.[6]

3. The issue here presented is of great importance to the administration of the election provisions of the

[5] The investigation conducted by the Secretary is not limited by the subject matter or scope of the complaint received, or of the preceding internal union protest. *Wirtz* v. *Local 191, Teamsters*, 321 F. 2d 445 (C.A. 2); *Local 57, Operating Engineers* v. *Wirtz*, 346 F. 2d 552 (C.A. 1).

[6] There are a number of district court decisions holding that the Secretary could not bring suit if the alleged illegality which was the basis of the suit had not been presented to the union for action prior to the initiation of suit. *E.g.*, *Wirtz* v. *Local*

Act. Most of the election suits under the Act to date have involved unreasonable restrictions on candidacy or other illegal practices which applied to most of the offices at stake in each election. And, as noted *supra*, few union members file clear, precise complaints which specifically allege that the violation complained of affects all the contests in the election. Thus, under the decision below, the Secretary would be barred from seeking complete relief in many cases where such relief would be warranted. Because of the time factors involved in this type of litigation, the Secretary realistically could not be expected to encour-

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*Union 169, International Hod Carriers, etc.*, 246 F. Supp. 741 (D. Nev.); *Wirtz* v. *Local Unions No. 406, etc., Operating Engineers*, 254 F. Supp. 962 (E.D. La.); *Wirtz* v. *Local Unions No. 450, etc., Operating Engineers*, 63 LRRM 2105, 54 L.C. ¶ 11,459 (S.D. Tex.); *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6*, 53 L.C. ¶ 11,359 (S.D.N.Y.). These cases did not hold, however, that the Secretary was barred from seeking effective relief merely because the full ramifications of the illegality were not specified in the internal complaint. They, in fact, allowed relief as to "every issue which the defendant union had a fair opportunity to consider and resolve." *Wirtz* v. *Local 169, supra*, 246 F. Supp. 741, 752. But see *Wirtz* v. *Local Union No. 125, Laborers' International Hod Carriers', etc.*, 231 F. Supp. 590 (N.D. Ohio), now pending as a companion petition for certiorari, and *Wirtz* v. *Local 705, Hotel and Restaurant Employees and Bartenders Union* (E.D. Mich., No. 27953), not reported, which dismissed the complaint on the authority of the decision below. Recent decisions adopting the position advocated by the Secretary in this suit are *Wirtz* v. *Local 545, Operating Engineers*, decided December 5, 1966, Civil No. 10082 (N.D.N.Y.); *Wirtz* v. *Local 1377, IBEW*, 54 L.C. ¶ 11,391, 63 LRRM 2029 (N.D. Ohio). We believe that the Secretary may bring suit with respect to any violation he finds in the course of his investigation whether or not that violation is alleged in the complaint.

age a more comprehensive complaint by a union member to the union after discovering the full extent of the illegality.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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MARCH 1967.

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## APPENDIX A

### UNITED STATES COURT OF APPEALS

### TENTH CIRCUIT

### JULY TERM 1966

### No. 8226

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, APPELLANT

*v.*

LOCAL UNIONS No. 9, 9–A AND 9–B, INTERNATIONAL UNION OF OPERATING ENGINEERS, APPELLEE

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### No. 8227

LOCAL UNIONS No. 9, 9–A AND 9–B, INTERNATIONAL UNION OF OPERATING ENGINEERS, CROSS-APPELLANT

*v.*

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, CROSS-APPELLEE

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APPEAL AND CROSS APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Before LEWIS, BREITENSTEIN and HICKEY, Circuit Judges

HICKEY, Circuit Judge

The action was filed in the District of Colorado pursuant to the requirements of Section 402 of the Labor Management Reporting and Disclosure Act.[1]

[1] 29 USC § 482 (1965).

Taylor and other members of defendant Local Unions affiliated with the International Operating Engineers Union filed declarations of candidacy for various local union offices. The Constitution of International required that the declarations be filed prior to January 15th of the year of the election. Taylor and other members complied with this requirement in 1963. In February of that year, these members were notified that under the Constitution of International and Bylaws of the local unions they were not eligible to file.

The Constitution, and local bylaws revised April, 1963, provide that nominees must be in continuous good standing for not less than one year. Good standing is defined in the Constitution as having paid all current dues to the local union. In the local Bylaws good standing is defined as payment of current quarterly dues on or before the first day of each quarter.

Taylor and the other members declared ineligible, although they paid their quarterly dues, had not paid on or before the first day of each quarter. This oversight in timely payment was the basis for the disqualification in the February notice. When the election was held on June 12, 1963, Taylor, who had declared himself a candidate for the Office of Financial Secretary, was therefore excluded from the ballot. Taylor protested to the Locals and the International on July 8, 1963. The protest was denied on September 24, 1963. On October 7, 1963, he filed a protest under Section 402 with the Secretary of Labor alleging a violation of Section 401.[3]

The Secretary investigated the complaint, found probable cause and filed the civil action in the Federal District Court of Colorado on December 6, 1963.

[3] 29 USC § 481 (1965).

The trial court, on uncontroverted facts established by the pretrial conference order, stipulations, and evidence adduced at trial, found the basis of the disqualification of Taylor unreasonable; and ordered the Secretary to supervise an election to rerun the candidates for the Office of Financial Secretary. Taylor was to be included among the candidates. This order, contrary to the demands of the Secretary, did not grant relief to other similarly aggrieved members who had failed to exhaust their internal remedies.

The order was based on two conclusions: (1) under Section 402 the scope of the Secretary's authority and thereby the jurisdiction of the court is limited to aggrieved parties who have exhausted their internal remedies; (2) the requirement that a candidate for office shall have paid his quarterly dues on or before the 1st day of the initial month of the quarter is an unreasonable requirement under Section 401.

The appeal questions the first conclusion regarding the scope of the Secretary's authority.

The cross appeal challenges the second conclusion that the eligibility requirements are unreasonable.

An examination of the legislative history of the Labor Management Reporting and Disclosure Act discloses that it was one of the most controversial efforts before the Congress in a decade. Two years of extensive public hearings had pointed up the need for legislation that would (a) sustain the internal stability of union organizations, (b) guarantee the individual members a voice in the democratic control of the organization and (c) protect the rights of the individual members.

The sections involved in the appeal were a part of the final efforts of Congress to establish a statutory

scheme to accomplish the purposes. Section 402 guarantees individual rights. It provides:

> "(a) A member of a labor organization who (1) has exhausted the remedies available under * * * such organization * * * or (2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of Section 401 of this title (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers) * * *".
>
> "(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this subchapter. * * * *
>
> "(c) If upon a preponderance of the evidence after a trial upon the merits, the court finds * * * (2) that the violation of Section 401 of this title may have affected the outcome of an election, the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. * * *"

The debates in the Senate at the time of enactment clearly indicate that all parts of the Act must be read in conjunction with the other parts. 105 Cong. Rec. 6720 (1959) (remarks of Senator Kennedy).

Thus, the act itself clearly indicates a limitation on the part of the Secretary and the court to consider only matters in which a member has exhausted his internal remedies. This is in line with the legislative purpose to sustain the stability of the union organization by giving it the first opportunity to correct a grievance of an individual member.

In Wirtz v. Local 191, 321 F.2d 445, 448 (1963), the Second Circuit recognized the limitation, "It may be that some or all of the limitations of Section 402 such as the exhaustion of internal remedies, are relevant to the suit which that section authorizes * * *."

Section 601* gives the Secretary the general investigative power he sought to enforce in the present case. Section 601, unlike Section 402, neither requires exhaustion of internal remedies nor authorizes the Secretary to seek remedies in court.

The trial court properly limited the enforcement to the Taylor complaint.

The pertinent part of Section 401(e) involved in the cross appeal provides: "In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to Section 504 of this title and to reasonable qualifications uniformly imposed) * * *."

The Constitution of International provides: "No member shall be eligible for election, be elected nor hold office unless he shall have been continuously in good standing in the Local Union electing him for not less than one year. * * *" The Bylaws of Locals 9, 9A, 9B, revised April, 1963, have a similar provision in Article VIII, § 3.

Article VIII, § 4 of the revised bylaws provides, "Good standing is defined as follows: That his dues

* 29 USC § 521. (1965).

be paid on or before January 1, April 1, July 1, October 1, of each year."

The amended bylaws provide in Article VIII, § 3(b), "In the event there has been no declaration of candidacy filed for an elective office, the nominees must have dues paid for the month in which nominations will be made; and nominations will be made in accordance with Section 5 of this Article.

Article VIII, § 5 provides, "Nominations of Local Union officers will be held at the Regular and District Meetings during the Month of May, with elections during the Month of June by mail referendum conducted by secret ballot among the general membership, and with installation of elected officers during the Month of July."

Article VIII, § 6, of the revised bylaws provides, "All members of Locals 9, 9A and 9B shall be eligible to nominate and vote in all elections provided their dues are currently paid for the period in which the nominations and elections are held. Nominations of Officers and elections will be held as stated in Section 5 above."

A comparison of the qualifications under Sections 4, 3 and 3(b), as conclusively shown by the evidence introduced in this case, denied a vast majority of the membership currently paid for the period in which nominations and elections are held and qualified to nominate and vote, the opportunity to be a candidate for office in the local union. The uncontroverted evidence together with an analysis of the requirements of the Constitution and Bylaws lead the trial court to conclude that those qualifications were unreasonable under Section 401(e).

The findings and conclusions of the trial court are sustained by the evidence and the law.

AFFIRMED.

## Appendix B

### United States Court of Appeals for the Tenth Circuit

### NINETEENTH DAY, SEPTEMBER TERM, THURSDAY, OCTOBER 6TH, 1966.

Before Honorable David T. Lewis, Honorable Jean S. Breitenstein, and Honorable John J. Hickey, Circuit Judges.

[Caption omitted]

This cause came on to be heard on the transcript of record from the United States District Court for the District of Colorado and was argued by counsel.

On consideration whereof, it is ordered and adjudged by the court that the judgment of the said district court in this cause be and the same is hereby affirmed.

## APPENDIX C

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

CIVIL ACTION NO. 8325

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF

*v.*

LOCAL UNIONS NO. 9, 9–A, AND 9–B, INTERNATIONAL UNION OF OPERATING ENGINEERS, DEFENDANT

### FINDINGS OF FACT AND CONCLUSIONS OF LAW PURSUANT TO RULE 52, FRCP

This is an action brought by plaintiff under Title IV of the Labor-Management Reporting and Disclosure Act of 1959, (73 Stat. 519 *et seq.*, 29 U.S.C. §§ 401 *et seq.*, (1958 ed. Supp. IV)), hereinafter referred to as the Act, to set aside an election of officers. Upon the uncontroverted facts established at the Pre-Trial Conference, the stipulations submitted by the parties, and the testimony and evidence adduced at a trial to the Court on November 24 and 25, 1964, and being duly advised in the premises, the Court makes the following:

#### FINDINGS OF FACT

1. This civil action seeks to set aside an election of officers held by defendant, a labor organization engaged in an industry affecting commerce, on June 12, 1963, at Denver, Colorado. This election was conducted subject to the constitution of the International

Union of Operating Engineers and defendant's by-laws.

2. An internal protest regarding this election was filed with the International Union of Operating Engineers on July 8, 1963, by Vern L. Taylor, Sr., who was at that time a member in good standing of defendant labor organization. Mr. Taylor received a final decision from the said International Union denying his protest on September 24, 1963.

3. On October 2, 1963, Mr. Taylor filed a written complaint with the Secretary of Labor, challenging the conduct of this election. The complaint of Mr. Taylor alleged that he had been ruled ineligible under defendant's constitution and bylaws, to be a candidate for the office of Financial Secretary which he sought in the challenged election, and that he had been wrongfully excluded from candidacy for that office.

4. Mr. Taylor was declared ineligible under a provision of the International constitution requiring that a candidate for office shall have paid his quarterly dues in advance, on or before the first day of each quarter, during the entire year preceding the election.

5. The aforesaid requirement, making a man ineligible to run for office if he paid his dues even one day late on one occasion, is a surprising one, and one that is not designed to accomplish the purpose of limiting the officer group to persons who are intensely interested in the activities of the union.

6. A substantial number of the members of defendant labor organization are engaged in construction work and are subject to seasonal fluctuations in employment, many of these people are out of work during the winter months preceding the election.

7. The requirement that a union member pay his dues on or before the first day of each quarter, without any grace period, works a hardship on persons who are out of work.

8. Under the aforesaid requirement, approximately 87% of the members of defendant organization were ineligible to be candidates for office in the challenged election.

9. During the year preceding the election, Mr. Taylor had in fact made all payments of his dues to defendant labor organization during and before the end of each quarter, thereby fulfilling all current dues payment requirements. At all times during said year, Mr. Taylor was a member in good standing of defendant labor organization for purposes of employment referral and representation, voice and vote in its affairs, and rights to insurance benefits under its death benefits plan.

10. Acting upon Mr. Taylor's complaint, the Secretary of Labor caused an investigation to be made of the challenged election, and as a result thereof found probable cause to believe that violations of Title IV of the Act (29 U.S.C. 401 *et seq.*) had occurred in the conduct of the challenged election.

11. Notice of this election and ballots to be voted therein were mailed by third-class mail to all of defendant's members, with the exception of 141 members whose mail had previously been returned to defendant by reason of incorrect home address. There was no evidence that the mailing of such notice and ballots to the aforesaid 141 members would have had any effect.

On the basis of these findings, the Court has reached the following:

## CONCLUSION OF LAW

1. The Court has jurisdiction over the parties and the subject matter of this action.

2. The scope of the relief the Secretary of Labor

can secure by this action under Section 402(b) of the Act (29 U.S.C. 482 (b)) is limited to the specific matters complained about in the complaint filed by defendant's member Vern L. Taylor, Sr., in accordance with Section 402(a) of the Act (29 U.S.C. 482(a)).

3. The complaint filed with the Secretary of Labor with respect to the challenged election, on the basis of which this suit was brought, was directed only to the office of Financial Secretary. The jurisdiction of this Court to grant any relief under Section 402(c) of the Act (29 U.S.C. 482(c)) with respect to this election is therefore limited to the one office sought by Mr. Taylor.

4. Assuming, without deciding, that the propriety of defendant's method of mailing out election notices and ballots is properly before the Court, it does not appear that there was any substantial violation of the Act in this respect. The Act does not require notices to be sent by first-class or certified mail, third-class mail is sufficient.

5. The only matter properly before the Court is the question whether the requirement that a candidate for office shall have paid his quarterly dues prior to their due date on each and every occasion during the year preceding the election is a "reasonable qualification," within the meaning of Section 401(e) of the Act, upon the right to be a candidate and to hold office in defendant labor organization. Upon a study of the letter of the law, the spirit of the law, and the terms and effect of the requirement itself, I conclude that this requirement is unreasonable, for the following reasons:

(a) The Act contemplates that every member who is in good standing shall be eligible to participate fully in his union.

(b) When a man is in good standing in terms of membership, it is surprising to him to learn that he

may not run for office if he paid his dues even one day late on one occasion; if he has no actual knowledge of such requirement, it can operate as a trap.

(c) The requirement is not designed to accomplish the purpose of limiting the officer group to persons who are intensely interested in the activities of the union.

(d) Since the operation of the rule has the effect of excluding the vast majority of the membership from eligibility for office, it violates the spirit of Section 401(e).

(e) While a requirement that a member be finally paid up, or that he keep his dues paid on a regular basis, would be perfectly reasonable, provided that he has some grace period, defendant's requirement is so strict as to be arbitrary and unreasonable.

(f) The requirement also works a hardship on persons who are out of work, as many of defendant's members are during the winter months.

6. The disqualification of Vern L. Taylor, Sr., as a candidate for the office of Financial Secretary in the challenged election was a violation of Section 401 (e) of the Act (29 U.S.C. 481(a)), and his exclusion as a candidate may have affected the outcome of the election for that office within the meaning of Section 402(c)(2) of the Act (29 U.S.C. 482(c)(2)).

It is thereupon ORDERED AND ADJUDGED that the June 1963 election for the office of Financial Secretary of Local Union 9 was improperly held and must be re-run, with all candidates who desire to do so, including Vern L. Taylor, Sr., appearing on the ballot. Said election to be held at the expense of the defendant Local Union and under the supervision of the Secretary of Labor in accordance with the provisions of 29 C.F.R., Chapter IV, Part 416, and to the

extent possible in accordance with the International constitution and Local bylaws.

It is FURTHER ORDERED AND ADJUDGED that the other relief requested in the complaint is hereby denied.

Dated at Denver, Colorado this 4th day of March, 1965.

(s) WILLIAM E. DOYE,
*Judge, United States District Court.*

U.S. GOVERNMENT PRINTING OFFICE: 1967

# In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1116

W. WILLARD WIRTZ, SECRETARY OF LABOR, PETITIONER

*v.*

LOCAL UNIONS NOS. 9, 9–A, AND 9–B, INTERNATIONAL UNION OF OPERATING ENGINEERS

## JOINT SUGGESTION OF MOOTNESS AND MOTION TO VACATE

Petitioner and respondent jointly move the Court to grant the petition for certiorari heretofore filed herein for the sole purpose of vacating the judgments below and remanding the case with a direction to dismiss the complaint as moot, and show in support thereof:

1. This action was brought by petitioner, the Secretary of Labor, under Title IV of the Labor-Management Reporting and Disclosure Act of 1959, to set aside an election of officers held by respondent labor organization in June 1963, and to have a new election held under the Secretary's supervision. On March 3, 1965, the district court granted the relief sought with



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respect to one office only. The Secretary appealed from that part of the order denying relief as to the other Union officers. The Court of Appeals for the Tenth Circuit affirmed and the Secretary has filed a petition for certiorari seeking review of that judgment, which is now pending before this Court.

2. On June 15, 1965, the International Union of Operating Engineers imposed a trusteeship on the respondent labor organization. As a result, the respondent has held no election of officers since that decision.

3. Preparatory to removing the trusteeship and restoring autonomy to respondent labor organization, the International Union of Operating Engineers directed that an election of officers be held among the members of respondent labor organization.

4. In the interest of terminating this pending litigation, the International Union of Operating Engineers has agreed that the Secretary may supervise the conduct of the election of all officers which is to be held among the members of respondent labor organization.

5. Pursuant to such agreement, the Secretary has achieved substantially the same relief prayed for in his complaint as originally filed in this action.

6. Accordingly, the parties join in requesting this Court to vacate the judgments of the United States Court of Appeals for the Tenth Circuit and of the

United States District Court for the District of Colorado and to remand the case to the district court with directions to dismiss the complaint as moot.

Respectfully submitted.

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APRIL 1967.

U.S. GOVERNMENT PRINTING OFFICE: 1967

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

## WIRTZ, SECRETARY OF LABOR *v.* LOCALS NOS. 9, 9-A, & 9-B, INTERNATIONAL UNION OF OPERATING ENGINEERS.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

No. 1116. Decided May 15, 1967.

PER CURIAM.

Upon the joint suggestion of the parties and an independent examination of the case, the petition for a writ of certiorari is granted, the judgments are vacated and the case is remanded with directions to dismiss the complaint as moot.